GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES, LABOUR AND MUNICIPAL ADMINISTRATION DEPARTMENT (LABOUR)

Labour Disputes.—Industrial Dispute between the Workmen and the Management of M/s. M.G.S. (Private) Ltd., Nazarbad Road, Mysore.

Award of the Labour Court, Bangalore—Published.

Read the following papers :—

(1) Letter No. 664/67-68, dated 14th September 1967, from Shri P. T. Kadkol, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE.

Dated this 14th day of September 1967.

Present :

Sri P. T. Kadkol, B.Sc., LL.B. ... Presiding Officer.

Reference No. 117 of 1966

Workmen represented by the Secretary, Mysore Division Motor Workers Association, Old Post Office Road, Chamarajanagar.

... *I Party.*

Vs

The Management of M/s. M. G. S. (Private) Ltd., Nazarbad Road, Mysore.

... *II Party.*

Reference.

Government Order No. LMA 428 LLD 66, dated 20th September 1966.

AWARD

The Government of Mysore being of opinion that an industrial dispute exists between the workmen and the management of M/s. M. G. S. (Private) Ltd., Mysore, have referred it to this Court for adjudication under Section 10 (1) (c) of the Industrial Disputes Act, 1947, by their Order No. LMA 428 LLD 66, dated

20th September 1966, setting out the following points of dispute for adjudication :—

"Is the Booking Agent, Sri B. Nagaraj, M/s. M. G. S. (Private) Ltd., Nazarbad Road, Mysore, entitled for reinstatement with back wages and continuity of service? if not, to what other relief he is entitled to?"

2. The cause of the aggrieved workman Sri B. Nagaraj has been sponsored by the Mysore Division Motor Worker's Association, Chamarajnagar, which is a registered Trade Union. This Union as representing the workmen is the first party and the Management of M/s. M. G. S. (Private) Ltd., is the second party in this proceeding. Mr. S. K. Sastry has appeared for the first party Union and Mr. Stanley Victor has appeared for the management.

3. In response to the notice issued by this court, the first party has submitted its statement of claims dated 19th January 1967. It has alleged therein that Nagaraj, the person concerned in this dispute was working as a booking agent under the Management for about 13 years; he was a permanent booking agent; he was discharging his duties properly and loyally, without any bad remarks; even then, the management of the second party terminated his services abruptly on 9th February 1966 without any charge or enquiry; the termination of his services is illegal and improper; hence the management of the second party be directed to reinstate him in his former post with full back wages and continuity of service etc.

4. The management of the second party has submitted its statement of objections dated 28th January 1967. The contentions raised by it are that Nagaraj was not a workman employed by it; there was no relationship of master and servant or an employer and employee between itself and Nagaraj; Nagaraj was only a sub-booking agent under one Venkatappa who was its permanent booking agent; as some routes were given up by it for running their transport services it told Venkatappa that he was no longer required by it as a booking agent; hence Nagaraj lost his sub agency since there was no relationship of an employer and employee between itself and Nagaraj; Nagaraj cannot be considered as a workman as defined by Section 2 (s) of the Industrial Disputes Act, 1947: consequently the dispute that has been referred for adjudication would not be an industrial dispute and hence this court would have no jurisdiction to adjudicate upon it; hence the demand of the first party be rejected with costs etc.,

5. On these pleadings, the following issues were framed on 27th February 1967 (*Vide* Order Sheet and set down for hearing.

1. Does the I Party prove that Nagaraj is a workmen within the definition given in Section 2 (s) of the Industrial Disputes Act?
2. Was there the relationship of employee and employer between him and the second party?
3. Does the I Party prove that the Management of the II Party has illegally terminated the services of the said Nagaraj?
4. What Award

Parties were asked to lead evidence on these issues and they have done so. The first party has examined Nagaraj (W. W. 1) and produced four documents marked Exts. W. 1 to 4. The second party has not examined any witnesses, but has produced six documents marked Exts. M 1 to M. 6. This is all the evidence in this case and I now proceed to discuss it.

6. The principle question arising for decision in this case is whether the concerned workman Nagaraj is a "workman" as defined in Section 2 (s) of the Industrial Disputes Act, 1917. It is his case that he was working only as the Stand Booking Agent under the management of the second party. But it has been laid down in various decisions by the Supreme Court and other High Courts, that the designation of the post held by the concerned workman is not a decisive factor for determining whether he is or is not a workman. Likewise, the mode in which a person concerned receives payment for the work done by him is also not quite relevant to the issue. The question shall have to be decided on the basis of what work the person concerned actually does or is required to do.

7. Nagaraj, as stated by him started his career as a booking Agent in 1947 or 1948 under a Transport Company by name Gayathri Motor Service at Mysore. His duty was to issue tickets to passengers and collect the prescribed fare from them and get a commission of one anna per rupee collected by him as remuneration. This Gayathri Motor Service was purchased by the Second Party in 1953 or 1954 and according to Nagaraj, he was continued as booking agent as before by the second party also. He has very clearly stated that he was not doing any other kind of work for the second party except working as a booking agent. In para 3 of his deposition, he has stated his work, as booking agent, was not being

checked by anybody on behalf of the second party: the ticket books used to be sent to him by the second party through the conductors whenever he wanted them; the amount collected by him used to be handed over by him to the line conductor deducting the commission due to him; for one rupee so collected he used to retain one anna as his commission and hand over fifteen annas to the line conductor after obtaining his acknowledgement.

8. Then in para 7 of his cross-examination he has stated that he is not in possession of any order of appointment given either by Gayathri Motor Service or by the second party. He was not signing in any attendance registers or wage registers maintained by he second party and no order of termination as such had been given to him by the second party etc. Then in his re-examination he has stated that no attendance registers had been maintained by the second party formerly; since the last 2 or 3 years the second party has been maintaining attendance registers for its employees and even in these registers his name does not appear. Then he has added that when questioned why his name was not mentioned in the attendance register he was told by the second party that the names of the booking agents would not be entered in them. This is practically all that has been stated by way of oral evidence.

9. From the very statement made by Nagaraj, it is clear that he did no other work under the second party except issuing tickets to passengers when the bus came to the stand, collect the fare from them and hand over the amount so collected to the line conductor of the bus after deducting his own commission. When handing over the amount to the conductor he used to prepare the trip sheets of the type of Ex.M.1 to M. 6. He has admitted that he has prepared and signed Exts. M. 1 to M.6. This would mean that his duty would start only when any bus came to the bus stand and ended immediately the bus left the place It is clear that he had no definite working hours as such, and the work he was doing was not controlled by anybody and much less by the management of the second party As I have said above already, the nature of the work done by a person determines his status *i.e.*, whether he is a workman or not. The leading case on this topic is the decision of the Supreme Court reported in 1957 I LLJ 477 (Dharangadhra Chemical Works Ltd. *Vs.* State of Soutashtra and others) It has been observed therein :—

"The principles according to which the relationship between employer and employee or master and servant has got

> to be determined are well settled. The *prima facie* test which applied in order to determine the relationship is the existence of right of control in respect of the manner in which the work is to be done. There is a distinction betw-en a contract for service and a contract of service. In the first case the master can order or require what is to be done while in the second case he can not only order or require what is to be done but how it shall be done."

In cases of this type, a question usually arises whether there is a employer-employee relationship between the worker and the alleged employer or that the relationship is that of principal and independent contractor and within the contractor is not looked upon as the employee of the industry. Often the Court is required to find out whether the real status of the person concerned is like that of an independent contractor or only as a servant or paid agent of the principle employer. The traditional test of the relation of employer and employee is said to be in the right of 'X' to control 'Y'. A servant is one whose work is under the control of another. A person is under the control of another if he is bound to obey the order of that *i.e.* the ther may tell him no only the work to perform but also how to perform it and the mannt er of its execution. Under a contract of service, a man is employed as part of the business and his work is done as an integral part of the business ; whereas, under a contract for service, his work, although done for the business, is not integrated into it but is only accessory to it. An employee is a part and parcel of an organisation, but an independent contractor is merely an accessory to the organisation. Various factors have to be taken in to account to find out whether there exists the relationship of master and servant between two parties. The method of payment is also one of the factors to be taken into account. If the person concerned is paid by time he is more likely to be a workman. If he is paid by job he is more likely to be a contractor. Another factor to be taken into account is whether the person claiming the status of a workman is required to work in the regular business hours of the employer or not. If the former, he is likely to be a workman and if the latter, he may not be one. Whether the time of the person concerned was at the disposal of the person who is said to be the employer is also one of the important factors to be taken into account. An agent is engaged to bring his principal into contractual relations with a third party, but the manner in which that is to be done is left to the discretion of the agent. An independent

contractor is a person who undertakes to produce a given result, but while he is executing the work he is not under the order or control of the person for whom he does the work, and might use his discretion in things not specified by the employer. A principal has the right to direct an agent what to do while a master has this right and a further right to direct how the work is to be done. A person who is required to devote a specified time to the work, some of it under instruction and control is a servant. Where there is no obligation to provide work, but merely an agreement that in certain event one would pay remuneration to the other the relationship between the parties is not one of master and servant but is one of agency.

10. Now if we apply the various tests mentioned above, which I have culled out from some decisions of the Supreme Court and the High Court, we find that there was no specific agreement on the part of the second party to provide work to Nagaraj. The agreement was that the second party should pay some commission to Nagaraj, if Nagaraj did some work *i.e.*, book tickets for the transport service. The second party had no control over the working hours of Nagaraj; in other words, the time of Nagaraj was not at the disposal of the second party management. Nagaraj was paid by the job he performed and not by the time spent by him. As admitted by Nagaraj, none from the management of the second party used to check the work that was done by him. The transport buses would have run as usual even if Nagaraj did not go to the bus stand and book tickets for the intending passengers. The "Control" test does not stand in this case in favour of Nagaraj. Considering therefore all these facts and circumstances, I am of the view that there was no relationship of master and servant or employer and employee between the management of the second party and Nagaraj, the person concerned in this dispute.

11. Mr. Sastry, appearing for the first party, has produced four documents in support of his contention that Nagaraj is a workman. The first document is Ex. W.1. It is a memo issued by the management of C. P. C. Motor Service, which is also said to be under the control of the second party, to Nagaraj on 24th March 1964. Therein, Nagaraj has been designated as a conductor. Ex. W.2. is the licence obtained by Nagaraj from the Regional Transport Officer to work as a booking agent. Ex. W.3 is an award passed by this Court in L. C. S. No. 40 of 1957. Ex. W.4 is a copy of the Notification issued by the Government of Mysore under the Minimum Wages Act, fixing the minimum wages of

some of the employees in the motor transport business. It is true that in Ex W 1 Nagaraj has been designated as a conductor. But that proves nothing. I have mentioned above on the authority of various decisions that designation of a person is not a conclusive evidence of his real status. So even though Nagaraj has been designated as a conductor in Ex. W.1. it cannot *per se* be held that he is a workman and that the relationship of employer and employee exists between the second party management and himself. Likewise Ex. W.2 also proves nothing. It appears that under the Motor Vehicle Rules, only a person who obtains a licence can work as a stand booking agent. Now coming to Ex. W.3 which is an award made by this court, we find that the person concerned therein had been appointed on a fixed salary and in addition to that was being paid some commission also. In those circumstances, that person was held to be a workman. But such is not the case with Nagaraj. Then in Ex. W 4. the Government of Mysore has prescribed a minimum salary of Rs. 55 per month for clerks, booking agents clerk and cashier clerks. It would only mean that if a booking agent is appointed as a workman by the management then his minimum salary should be Rs. 55 per month. On the basis of this notification, it cannot be held that booking agents in all cases are employees of the motor transport company employing them. In my opinion, therefore, the four documents relied on by Mr. Sastry do not help him to establish the fact that Nagaraj is a workman.

12. As held in Chintaman Rao *Vs* State of Madhya Pradesh (1958 II LLJ 252) the concept of employment involves three ingredients: (1) employer, (2) employee and (3) the contract of employment. An employer is one who employs, *i.e.*, one who engages the services of other persons. The employee is another who works for another for hire. The employment is the contract of service between the employer and the employee whereunder the employee agrees to serve the employer subject to his control and supervision. Nagaraj has not stated anywhere in his deposition nor has it been averred in the statement of claims that as a booking agent, he was required to serve the management of the second party under its control and supervision. Nagaraj when getting some remuneration by way of commission only if he attended the bus stand and issued tickets to passengers and collected the fare. He has not stated that an obligation was cast on him under the contract to be present and to issue tickets. No assured remuneration was also given to him. In these circumstances also, I feel that Nagaraj cannot be held to be a

workman as defined in Section 2 (s) of the Industrial isputes Act, 1947. It cannot also be said that there was a relationship of employer and employee between management of the second party and Nagaraj. Hence I record my findings on the first two issues in the negative.

13. It follows therefore that the present dispute would not be an industrial dispute because Nagaraj is not a workman. When it has not been proved that he is a workman, the termination of his service, even if it had been made by the second party would not make the present dispute an industrial dispute. Hence in my opinion, the third issue does not survive.

14. In view of the findings recorded by me on the first two issues, it follows that Nagaraj is not entitled to be reinstated as demanded by him and the first party Union on his behalf. I would therefore make an Award as under :—

AWARD

Reference is rejected. The demand made by Nagaraj and the first party Union on his behalf for his reinstatement also rejected. Parties do bear their own costs.

P. T. KADKOL,
Presiding Officer,
Labour Court, Bangalore.

ORDER

Bangalore, dated 23rd September 1967.

S. O. 1970.—WHEREAS by State Government Order No. LMA 428 LLD 66, dated 20th September 1966, the Industrial Dispute between the Workmen and the Management of M/s. M. G. S. (Private) Ltd., Nazarbad Road, Mysore was referred to the Labour Court, Bangalore for adjudication ;

AND WHEREAS the Labour Court, has submitted to the State Government its award in respect of the said Industrial Dispute ;

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore, are pleased to direct the publication of the said award as above in the *Mysore Gazette*.

[No. LMA 428 LLD 66.]

By Order and in the name of the Governor of Mysore,
G. G. PUROHIT, *Under Secy.*